

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Hon. Hugh B. Scott

13CR113A

v.

**Report
&
Recommendation**

Jose L. Olivero, Jr. aka Joselito,

Defendant.

Before the Court is the omnibus motion filed on behalf of defendant Jose L. Olivero, Jr. (“Olivero”) (Docket No. 23).¹

Background

On May 15, 2013, the Grand Jury for the Western District of New York indicted Olivero on charges that on February 27, 2013 he possessed heroin with the intent to distribute in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. §2. [Count 1]; and maintaining a drug involved premises in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. §2 [Count 2]. (Docket No. 13)

¹ The non-dispositive issues raised in the motion are the subject of a separate Decision & Order.

Motion To Suppress Statements

In his pretrial omnibus motion, the defendant stated that voluntary discovery had not revealed any statements attributed to the defendant. Nevertheless, to the extent that any statements were attributable to the defendant, the defendant reserved the right to move to suppress such statements. (Docket No. 23 at page 3).

Discovery has taken place in this matter and the defendant has not identified any outstanding discovery issues. Inasmuch as the defendant has not identified any statement sought to be suppressed, to the extent that the defendant's omnibus motion sought the suppression of statements, the motion should be denied.

Conclusion

For the reasons stated above, the motion to suppress (Docket Nos. 23) should be denied.

Pursuant to 28 U.S.C. §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within fourteen(14) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as W.D.N.Y. Local Rule 72(a)(3).

FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER

**BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED
HEREIN.** Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and W.D.N.Y. Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to W.D.N.Y. Local Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

Buffalo, New York
October 8, 2013

/s/ Hugh B. Scott
United States Magistrate Judge
Western District of New York